

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LA VELDA SINGLETON d.b.a. LOVE AND  
CARE PRESCHOOL,

Plaintiff,

v.

TRAVELERS INDEMNITY COMPANY OF  
CONNECTICUT, et al.,

Defendants.

No. C 08-1852 CW

ORDER GRANTING  
PLAINTIFF'S MOTION  
FOR REMAND AND  
DENYING WITHOUT  
PREJUDICE  
DEFENDANT'S MOTION  
TO DISMISS

Plaintiff La Velda Singleton has filed a motion to remand this case to Alameda County Superior Court. Defendant Travelers Indemnity Company of Connecticut opposes the motion and has filed a motion to dismiss. The motions were taken under submission on the papers. Having considered all of the parties' papers, the Court grants Plaintiff's motion and denies Defendant's motion without prejudice.

BACKGROUND

The following facts are alleged in the complaint. Plaintiff is the owner of the building located at 8010 Holanda Lane in Dublin, California. Plaintiff is also the proprietor of Love and Care Preschool, which she operated at the Dublin property. On November 17, 2004, a fire damaged the building and its contents,

1 rendering it uninhabitable and unfit for use as a preschool.

2 At the time of the fire, Plaintiff carried an insurance  
3 policy, written by Defendant Travelers, that covered the building,  
4 its contents and the loss of income and extra expense that might be  
5 sustained if a covered peril made the insured building  
6 uninhabitable. Plaintiff obtained the Travelers policy, and had  
7 since 1982 obtained all of her property insurance, through  
8 Defendant Uren Harrison Kennedy Insurance Agency (Uren), a  
9 California corporation that acted as Travelers' agent. Plaintiff  
10 alleges that at the time she obtained the insurance for the  
11 building, "and at various times there after [sic], the agents,  
12 employees, officers and representatives of Uren stated that they  
13 had the skill, experience and expertise to obtain the kind and the  
14 amount of insurance that Plaintiff would need to protect her  
15 interests." Complaint ¶ 11. Moreover, Plaintiff alleges that,  
16 from 1982 to the time of the fire, Uren "routinely inspected and  
17 considered the insurance needed for the insured building, its  
18 contents and a potential interruption in Plaintiff's preschool  
19 should the insured building become uninhabitable." Id. at ¶ 12.

20 Plaintiff alleges that she and Defendants Uren and Travelers  
21 "agreed that the written policy of insurance to be issued would  
22 protect the Plaintiffs['] financial interests should an insured  
23 peril cause the complete loss of the building and content [sic] and  
24 rendered [sic] the building uninhabitable." Id. at ¶ 17.  
25 Plaintiff refers to this as "the 'Agreement' between the parties."  
26 Id.

27 However, Plaintiff alleges that after the fire, Defendants  
28

1 Uren and Travelers

2 claimed that their liability to Plaintiffs [sic] was  
3 limited to the terms set forth in Travelers' and Does  
4 1-30's written policy of property insurance, but unlike  
5 the Agreement . . . the policy of property insurance  
6 issued by Travelers and Does 1-30 did not provide the  
promised coverage for the insured building, its  
contents or provide for loss of income and extra  
expense incurred because the insured building became  
uninhabitable.

7 Id. at ¶ 19. After the fire, Plaintiff provided Travelers with  
8 prompt notice of the loss and damage.

9 Based on these allegations, Plaintiff brings claims against  
10 Travelers for reformation of the property insurance policy, breach  
11 of the insurance policy, breach of the covenant of good faith and  
12 fair dealing, fraud and negligent misrepresentation. Plaintiff  
13 also states a claim for negligence against Uren and Travelers.

14 In addition, Plaintiff alleges various claims based on  
15 Travelers' handling of her claim following the fire and the  
16 reconstruction of her building. Plaintiff states an intentional  
17 infliction of emotional distress claim against Allyson Delgado, the  
18 claims administrator assigned to Plaintiff's claim. Plaintiff  
19 alleges that Delgado "earned salary, bonuses, and benefits based on  
20 her ability to undermine, discredit, and destroy policyholders'  
21 legitimate claims so that Travelers and Does 1-30 could avoid their  
22 obligations under their policies of insurance." Id. at ¶ 64.

23 Next, Plaintiff alleges that the contractors and engineers hired by  
24 Travelers to assess the damage to her property, Defendants Chris  
25 Morton, Hohback-Lewin Inc., Isam Hasenin, Murat Zilink and Walter  
26 Springs Construction (Construction and Engineering Defendants),  
27 knowingly wrote reports based on "direction from Travelers'

1 personnel as to the conclusion that there [sic] reports should  
2 reach." Id. at ¶ 99. Therefore, she alleges that the Construction  
3 and Engineering Defendants are liable for civil aiding and abetting  
4 for assisting Travelers in breaching the covenant of good faith and  
5 fair dealing.

6 Finally, Plaintiff alleges that Textron Financial and Bank of  
7 the West (Creditor Defendants) improperly applied the proceeds of  
8 Plaintiff's insurance claim to the outstanding loan balance on her  
9 mortgage on the property. Plaintiff alleges that she forwarded the  
10 check from Travelers to the Creditor Defendants "to hold in a  
11 separate account to be used to repair and replace the insured  
12 dwelling." Id. at 115. Therefore, Plaintiff brings a claim for  
13 breach of contract and breach of the covenant of good faith and  
14 fair dealing against the Creditor Defendants.

15 On February 19, 2008, Plaintiff filed her complaint in Alameda  
16 County Superior Court and served it on Defendant Travelers. On  
17 April 7, 2008, Travelers filed a notice of removal, arguing that  
18 this Court has diversity jurisdiction over the case. On April 9,  
19 2008, Plaintiff filed in the state court proofs of service  
20 indicating that, on March 22, 2008, Defendants Hasenin, Hohback-  
21 Lewin, Morton, Uren and Walter Springs Construction had been  
22 served.

#### 23 DISCUSSION

24 A defendant may remove a civil action filed in state court to  
25 federal district court so long as the district court could have  
26 exercised original jurisdiction over the matter. 28 U.S.C.  
27 § 1441(a). If at any time before final judgment it appears that  
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1 the district court lacks subject matter jurisdiction over a case  
2 previously removed from state court, the case must be remanded. 28  
3 U.S.C. § 1447(c). On a motion to remand, the scope of the removal  
4 statute must be strictly construed. Gaus v. Miles, Inc., 980 F.2d  
5 564, 566 (9th Cir. 1992). "The 'strong presumption' against  
6 removal jurisdiction means that the defendant always has the burden  
7 of establishing that removal is proper." Id. Courts should  
8 resolve doubts as to removability in favor of remanding the case to  
9 state court. Id.

10 District courts have original jurisdiction over all civil  
11 actions "where the matter in controversy exceeds the sum or value  
12 of \$75,000, exclusive of interest and costs, and is between  
13 . . . citizens of different states." 28 U.S.C. § 1332(a). When  
14 federal subject matter jurisdiction is predicated on diversity of  
15 citizenship, complete diversity must exist between the opposing  
16 parties. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365,  
17 373-74 (1978).

18 A defendant may remove a case lacking complete diversity and  
19 seek to persuade the district court that any non-diverse defendant  
20 was fraudulently joined. See McCabe v. Gen. Foods Corp., 811 F.2d  
21 1336, 1339 (9th Cir. 1987). "If the plaintiff fails to state a  
22 cause of action against a resident defendant, and the failure is  
23 obvious according to the settled rules of the state, the joinder of  
24 the resident defendant is fraudulent." Id. at 1339. The defendant  
25 need not show that the joinder of the non-diverse party was for the  
26 purpose of preventing removal. Instead, the defendant must  
27 demonstrate that there is no possibility that the plaintiff will be

1 able to establish a cause of action in state court against the  
2 alleged sham defendant. See id.; Ritchey v. Upjohn Drug Co., 139  
3 F.3d 1313, 1318 (9th Cir. 1998). For purposes of deciding a motion  
4 for removal, "[t]he Court may look beyond the pleadings and  
5 consider affidavits or other evidence to determine if the joinder  
6 was a sham." Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1068  
7 (9th Cir. 2001).

8 Defendant Travelers argues that complete diversity exists here  
9 because it is a Connecticut corporation, Textron is a Rhode Island  
10 Corporation and the complaint does not state a claim against  
11 Delgado, Uren, the Construction and Engineering Defendants or Bank  
12 of the West. Because Plaintiff has stated a cause of action  
13 against Uren, complete diversity does not exist and this case must  
14 be remanded to the state court.

15 As described above, Plaintiff's complaint includes a  
16 negligence claim against her insurance agent, Uren. The complaint  
17 alleges that Uren "failed to exercise reasonable care in  
18 determining the necessary kinds and amounts of insurance needed to  
19 protect Plaintiff's financial interest in the insured building, its  
20 contents[,] the potential loss of earnings and extra expenses."  
21 Complaint ¶ 83. As Travelers concedes, "the law recognizes a cause  
22 of action for professional negligence against an insurance broker  
23 who fails to secure requested coverage." Opposition at 9; see Free  
24 v. Republic Ins. Co., 8 Cal. App. 4th 1726, 1729-30 (1992).

25 Here, Plaintiff alleges that Uren represented to her that it  
26 "had the skill, experience and expertise to obtain the kind and  
27 amount of insurance that Plaintiff would need to protect her  
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1 interests against physical loss which might occur to the insured  
2 building, its contents and for the interruption of her business  
3 that might arise should the insured building become uninhabitable."  
4 Complaint ¶ 75. Moreover, Plaintiff alleges that Uren "routinely  
5 inspected the insured building, its contents and considered the  
6 potential loss of income and extra expense that might occur should  
7 a covered peril render the insured building uninhabitable." Id. at  
8 ¶ 76. Contrary to Travelers' argument, Plaintiff's negligence  
9 claim extends beyond "code upgrade coverage."

10 Travelers also argues that any negligence claim against Uren  
11 is barred by the two-year statute of limitations. See Cal. Code.  
12 Civ. P. § 339(1); Hydro-Mill Co., Inc. v. Hayward, Tilton and  
13 Rolapp Ins. Assocs. Inc., 115 Cal. App. 4th 1145, 1155 (2004).  
14 Travelers bases this argument on an assumption that the claim  
15 accrued on November 17, 2004, the date of the fire. However, there  
16 is nothing in the record to demonstrate that Plaintiff had reason  
17 to believe that her losses were not covered on the date they  
18 occurred.

19 To determine its jurisdiction, the Court need not decide  
20 whether Plaintiff can prove a legally cognizable claim against  
21 Uren, but need only conclude that she has plead one under state  
22 law. Briggs v. Lawrence, 230 Cal. App. 3d 605, 610 (1991). It is  
23 Travelers' burden to demonstrate that there is no possibility that  
24 Plaintiff will be able to establish a cause of action against Uren  
25 in state court. With all reasonable inferences drawn in  
26 Plaintiff's favor, she has alleged a timely claim for negligence  
27 against Uren. Thus, while it remains to be seen whether Plaintiff  
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1 will be able to prevail on such a claim, the Court cannot conclude  
2 that there is no possibility that she will. Accordingly, Travelers  
3 has not met its heavy burden of establishing that this Court has  
4 removal jurisdiction.

5 CONCLUSION

6 For the foregoing reasons, the Court GRANTS Plaintiff's motion  
7 to remand this action to state court (Docket No. 13). Because the  
8 Court lacks subject matter jurisdiction over this case, it is  
9 without power to adjudicate Travelers' motion to dismiss (Docket  
10 No. 5). Therefore, that motion is DENIED WITHOUT PREJUDICE to  
11 re-filing it in the state court proceedings. The clerk shall close  
12 the file. Each party shall bear its own costs.

13 IT IS SO ORDERED.

14 6/27/08

15 Dated: \_\_\_\_\_



16 CLAUDIA WILKEN  
17 United States District Judge  
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